IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 16834 of 2005(D)

CMA.107/2001 of ADDL. DISTRICT COURT, THODUPUZHA

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PETITIONER:

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1. CONSERVATOR OF FORESTS,
   HIGH RANGE CIRCLE, KOTTAYAM.

2. THE DIVISIONAL FOREST OFFICER,
   KOTTAYAM.

BY GOVERNMENT PLEADER
SRI.RANJITH THAMPAN,SPL.G.P,FORESTS

RESPONDENTS:

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1. MANOJ MURALI, MELLATHU HOUSE,
   NARIMPARA, KATTAPPANA VILLAGE, IDUKKI DISTRICT.

2. ADDITIONAL DISTRICTG JUDGE,
   THODUPUZHA.

BY ADV. SMT.P.K.RAJEE NAYANAR
SRI.VINUCHAND
SRI.S.DILEEP (KALLAR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF ORDER NO.A2.1513/99 DATED 31.1.2001 PASSED BY THE AUTHORISED OFFICER, KOTTAYAM IN RESPECT OF VEHICLE NO.KLO/5057.

EXT.P2: COPY OF THE JUDGMENT OF THE LEARNED DISTRICT JUDGE IN CMA NO.107/2001.

EXT.P3: COPY OF MAHAZAR DATED 5.3.1999

EXT.P4: COPY OF MAHAZAR DATED 13.3.1999

EXT.P5: COPY OF MAHAZAR DATED 15.3.1999

EXT.P6: COPY OF STATEMENT GIVEN BY MADHU S/O. MURALI, MELATTU HOUSE, ATED 5.3.1999

EXT.P7: COPY OF STATEMENT GIVEN BY MANOJ MRUALI, S/O MURALEEDHARAN NAIR, MELATTU HOUSE DATED 29.5.1999

EXT.P8; COPY OF STATEMENT GIVENBY NARAYANAN S/O. RAMAPPAN DATED 15.3.1999

/TRUE COPY/

P.A. TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 16834 of 2005

Dated this the 13th day of August , 2007

JUDGMENT

The Conservator of Forests, High Range Circle, Kottayam, and the Divisional Forest Officer, Kottayam are the petitioners in this writ petition under Article 227 of the Constitution and they impugn Ext.P2 judgment of the District Court, Kottayam in the Civil Miscellaneous Appeal which was filed under Section 61B of the Kerala Forest Act setting aside a confiscation order passed by the authorized officer of the DFO Kottyam under Section 61A of the said Act. The first respondent was the registered owner of a Jeep bearing registration number KLO-5057 which was seized by the forest officials of Kumily, Forest Range on 5.3.1999 together with freshly cut forest fire wood. Estimated loss caused to the Government is at Rs.2,500/-. Confiscation proceedings were initiated after giving notice under Section 61B of the Kerala Forest Act to the respondent and after enquiry, Ext.P1 confiscation order was passed. In the appeal preferred by the first respondent before the District Court, Kottayam under Section 61B, the learned District Judge set aside Ext.P1 and passed Ext.P2. Impugning Exts.P1 and P2 on various grounds, the

petitioners pray that Ext.P2 be set aside and Ext.P1 confiscation order be restored.

2. I have heard the submissions of Sri.Ranjith Thamban, the Special Government Pleader for Forest Cases and those of Sri.S.Dilip the learned counsel for the respondents. Flaying Ext.P2 on the grounds raised in the writ petition, Sri. Ranjith Thamban submitted that in a proceedings under Section 61A of the Forest Act the burden for establishing three conditions envisaged under that Section is on the owner of the vehicle and in this context the learned counsel placed strong reliance on the judgment of the Division Bench in **State of Kerala v. Mathew (1995 (2) KLT 772)**. Counsel submitted that circumstance that total worth of the fire wood recovered was only Rs.500/- in contrast to the value of the vehicle which was concededly worth more Rs.40,000/- had weighed considerably with the learned District Judge. Referring to the judgment of this court in **State of Kerala v. Sukumar Panicker (1987 (2) KLT 341)** the learned counsel submitted that relative values of the vehicle and the contra band are immaterial.

3. The learned counsel for the respondents would refer to the judgment in **State of Kerala v. Ancy Philip (2006 (1) KLT 699)** and submit that it is obligatory that the recovered forest produce is

produced before the Magistrate before whom the crime (OR) has been registered. In the instant case no such production has been made. This is a fatal to the prosecuation according to the learned counsel.

4. On going through Ext.P2 judgment and on appreciating the rival submissions addressed before me, it is seen that the learned District Judge has highlighted certain patent discrepancies in the Mahazar relied on by the Department as to the identity of the estate wherein the forest tree (vediplavu) in question was cut. But it cannot be in dispute that the two estates named in the Mahazar (NMR estate and EVS estate) both within the cardamom hill reserve area and therefore there cannot be any doubt that the tree in question belonged to the Government. It also appears to me that the principles laid down by the Division Bench in State of Kerala v. Mathew 1995 (2) KLT 772) (supra) regarding the burden of proof for establishing the three conditions under section 61A have not been taken into account by the learned District Judge. The learned District Judge seems to have been disturbed by the vast difference between the values of the vehicle ordered to be confiscated and value of the vehicle ordered to be confiscated and the contra band fire wood. But this court has held in State of Kerala v.Sukumar Panicker's (supra) that relative value of the vehicle and the contra band is immaterial.

It is thus seen that the learned District Judge proceeded on basically wrong premises for setting aside Ext.P1 order. I set aside Ext.P2 and direct the learned Judge to take fresh decision after hearing both sides. While taking decision as above, the principles laid down by this court in State of Kerala v. Mathew (supra) and the State of Kerala v. Sukumar Panicker (supra) shall be kept in mind by the learned District Judge. It is open to the respondents to defend the case on all available grounds including the ground based on the judgment in State of Kerala v. Ancy Philip 's case (supra). Fresh decision as directed above shall be taken by the learned District Judge at the earliest and at any rate within four months of receiving a copy of this judgment.

PIUS C.KURIAKOSE, JUDGE

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